

E-filing

CRYSTAL ANN POOLE
P.O. Box 6913
San Pablo, CA 94806-6913
Petitioner, *Pro Se*

FILED
JUN 18 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IFP
NP
13

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CRYSTAL ANN POOLE,
Petitioner/Plaintiff,

v.

CONNELL AUTO CENTER, and
EUROPEAN AUTO CENTER,
Defendants,

v.

UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE, and
JENNIFER FONG, IRS SPECIAL
AGENT,

Respondents.

CASE NO.

C10-02668

ADR

RS

**PETITION AND COMPLAINT TO
QUASH IRS THIRD PARTY
SUMMONSES**

COMES NOW Crystal Ann Poole, Petitioner/Plaintiff, *pro se*, and petitions this Court
to quash two Internal Revenue Service Third Party Administrative Summons.

JURISDICTION

1. This Court has jurisdiction pursuant to Title 26 U.S.C. § 7609 and Title 5 U.S.C.

1 § 552(a).¹

2 2. Venue is proper, because the custodian of records and records sought (the
3 subject of this controversy) by the summonses to Connell Auto Center and European Auto
4 Center, is within the district of the United States District Court for the Northern District of
5 California. A third and additional Summons was issued to Wells Fargo Dealer Services² in
6 Rancho Cucamonga and is related to the summonses issued to Connell Auto Center and
7 European Auto Center. Petitioner contends that judicial economy and the convenience of the
8 parties dictates that these summonses should be heard together. Petitioner will seek counsel
9 to consider whether motion should be made to change the venue to The Northern District of
10 California where Petitioner, Respondents, Defendants, and the majority of the Third Parties
11 are all located.

12 PARTIES

13 3. The Petitioner/Plaintiff in this action is Crystal Ann Poole, (hereinafter
14 "Poole"), whose address is P.O.Box 6913, San Pablo, CA 94806-6913.

15 4. The Respondents in this action are the United States of America, the Internal
16 Revenue Service (hereinafter "IRS") and Jennifer Fong, IRS Special Agent (hereinafter
17 "Fong").

18 5. Fong is the IRS official that issued the alleged summonses which are the subject
19 of this controversy. Fong's mailing address is 1301 Clay Street, Suite 1780-S, Oakland,
20 California 94612.

21 6. The Defendants and Third Parties from whom IRS seeks records are:

22 a) Connell Auto Center (hereinafter "Connell") located at 2820
23

24 ¹ All further references to Code Sections are to Title 26 unless otherwise noted.

25 ² 28 U.S.C. Section 7609(h) states – "The United States district court for the
26 district within which the person to be summoned resides or is found shall have
27 jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or
28 (g)." Thus, the Motion to Quash the IRS Summons in the case of Wells Fargo Dealer
Services has been filed in the Central District of California.

1 Broadway, Oakland, California, 94611;

2 b) European Auto Center (hereinafter "European") located at 10269
3 San Pablo, El Cerrito, California 94530.

4 7. The third party summonses which were issued to Connell and European on May
5 27, 2010 will hereinafter collectively be referred to as the "Oakland Summonses." (See
6 Exhibits "A" and "B" the IRS summonses issued to Connell and European, true and correct
7 copies attached hereto.) On or about June 10, 2010, Connell and European complied with the
8 IRS summonses, surrendering Petitioner's records to the IRS.

9 CAUSES OF ACTION AGAINST RESPONDENTS

10 For the Causes of Action against the Respondents, and each of them, Poole alleges as
11 follows:

12 I. First Cause of Action Against Respondents

13 8. The Oakland Summonses are in violation of the statutory summons process and
14 should be quashed because IRS failed to give Poole timely notices required by 26 U.S.C.,
15 Section 7609(a)(1), *i.e.*, 23 days notice prior to the date set to turn over the records requested..
16 As a consequence, Poole was not given the opportunity to timely file a Petition to Quash the
17 Summons pursuant to Section 7609(b)(1).

18 II. Second Cause of Action Against Respondents

19 9. The IRS are in violation of the statutory summons process as they failed to
20 provide Poole advance notice that contact with any of these third parties were to be made;
21 and, failed to periodically provide Poole with a record of persons contacted by IRS about
22 Poole as required by Section 7602(c)(1)&(2).

23 III. Third Cause of Action Against Respondents

24 10. Poole alleges upon information and belief that the Oakland Summonses were
25 issued while a referral for criminal prosecution to the Department of Justice is pending, which
26 was made by the IRS in violation of Section 7602(d)(2)(A).

27 IV. Fourth Cause of Action Against Respondents

28 11. Poole alleges that the IRS abused the summonses process as the Oakland

1 Summonses are third party summonses the purpose of which is to summons third party record-
 2 keepers. (See IRM 25.5.1.5). Connell and European are not third party record-keepers
 3 pursuant to Section 7603(b)(2)(1). As such the use of Form 2039 summonses to summons
 4 Connell and European was an abuse of the summons process.

5 V. Fifth Cause of Action Against Respondents

6 12. Because of the violations and abuses of the summonses process as alleged
 7 within paragraphs 8 through 11, inclusive, the IRS failed to meet the "GOOD FAITH"
 8 requirement of the *Powell*³ standard.

9 **CAUSES OF ACTION AGAINST DEFENDANTS**

10 For the Causes of Action against the Defendants, and each of them, Poole alleges as
 11 follows:

12 I. First Cause of Action Against Defendants

13 13. Connell and European voluntarily and contrary to law turned over Poole's records
 14 to the Respondents in violation of the Privacy Laws of the United States of America.

15 II. Second Cause of Action Against Defendants

16 14. Connell and European, voluntarily and contrary to law turned over Poole's records
 17 to the Respondents in violation of the Privacy Laws of the State of California and in violation
 18 of Pooles's California Constitutionally protected rights under Article 1, Section 1, California
 19 Constitution.

20 PRAYER FOR RELIEF

21 Wherefore, Poole respectfully requests that this Court:

22 1. QUASH the third party administrative summonses of May 27, 2010, to Connell and
 23 European for the records pertaining to Crystal Ann Poole.

24 2. ORDER that the IRS turn over to Poole a copy of any and all summonses and request
 25 for documents that were issued to third parties that were issued by IRS to any Third Parties
 26 to obtain records.

27
 28 ³ *United States v. Powell*, 379 U.S. 48, 85 S.Ct. 248 (1964).

1 3. ORDER that the IRS turn over to Poole any and all records that were obtained, in its
2 investigation of Poole by any means that were not in full compliance with the summoning
3 provisions of the Internal Revenue Code Section 7602, et seq. and Section 7609, et seq.

4 4. Declare that Connell and European are not third party record-keepers and therefore had
5 no legal obligation to respond to the IRS" illegally issued Oakland Summonses.

6 5. ORDER Respondent and Defendants to pay Poole \$1,000.00 for each violation of the
7 State and Federal Privacy Laws.

8 6. Grant any and all other relief that the Court deem just and prudent, the foregoing
9 considered.

10 Dated: 6/18/2010

11
12 Crystal A. Poole, Pro Se
13 Crystal Ann Poole, Pro Se Petitioner/Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Crystal Ann Poole, certify that pursuant to IRC §7609(b)(2)(B) true copies of the attached
"PETITION AND COMPLAINT TO QUASH IRS THIRD PARTY SUMMONSES"
have been served, on this ____th day of JUNE, 2010, via Certified Mail to each of the following
parties:

Cert. Mail # 7009 3410 0000 6766 2863

Internal Revenue Service, Jennifer Fong, Special Agent
1301 Clay Street, Suite 1780-S
Oakland, CA 94612

Cert. Mail # 7009 3410 0000 6766 2870

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Washington, DC 20530-0001

Cert. Mail # 7009 3410 0000 6766 2887

Joseph P. Russoniello, US Attorney
1301 Clay Street, Suite 340S
Oakland, CA 94612

Cert. Mail # 7009 3410 0000 6766 2894

Connell Auto Center - Custodian of Records
2820 Broadway
Oakland, CA 94611

Cert. Mail # 7006 2150 0001 6838 3596

European Auto Center - Custodian of Records
10269 San Pablo Ave.
El Cerrito, CA 94530

Crystal Ann Poole, *pro se*
P.O. Box 6913
San Pablo, CA 94806-6913

cc:

Ronald V. Dellums Federal Building
1301 Clay Street, Suite 400S
Oakland, CA 94612-5217



Summons

In the matter of CRYSTAL ANN POOLE - 745 61st STREET, OAKLAND CA 94609

Internal Revenue Service (Division): Criminal Investigation

Industry/Area (name or number): Oakland Field Office

Periods: January 1, 2005 - December 31, 2009

The Commissioner of Internal Revenue

To: Custodian of Records - Connell Auto Center

At: 2820 Broadway, Oakland, California 94611

You are hereby summoned and required to appear before Special Agent Jennifer Fong or her designee
an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

"SEE ATTACHMENT"

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1301 Clay Street Suite 1780-S, Oakland, CA 94612 Telephone: (510) 637-1088

Place and time for appearance at 1301 Clay Street Suite 1780S, Oakland, CA 94612

(documents can be mailed in lieu of appearance)



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 12-2001)
Catalog Number 21405J

on the 10th day of June, 2010 at 10 o'clock a m.
(year)
Issued under authority of the Internal Revenue Code this 27th day of May, 2010
(year)

Signature of issuing officer

Special Agent

Title

N/A

Title

Signature of approving officer (if applicable)

Part C — to be given to noticee

Exhibit

A

Connell Auto Center
Custodian of Records
2820 Broadway
Oakland, CA 94611

ATTACHMENT

Please provide any and all records relating to the purchase, sale or lease of the following vehicles to Crystal Ann Poole (SSN: 426-29-1330):

- 2005 Jeep Liberty, VIN # 1J4GL48K95W502037, CA License # 6KQA382
- Other vehicles purchased, sold or leased to the person named above

The records should include but are not limited to the following:

- 1) Sales contract for the above vehicle(s), including any documentation for any trade-ins.
- 2) Lease agreements for the above vehicle.
- 3) Copies of receipts of payments and down payments. Copies of any checks (front and back), cashier's checks, money orders, wires, and documentation of any cash payment. Any paperwork showing the source of funds used for the down payment.
- 4) Credit applications to obtain financing and all supporting documentation submitted including bank statements, W-2's, Federal income tax returns, financial statements, etc. Copies of any TRW or Experian credit histories.
- 5) Any additional amounts paid for options, services, or maintenance on the above named vehicles. Include copies of the vehicle maintenance reports.

NOTE:

Contact Special Agent Jennifer Fong at (510) 637-1088 if you have any questions.

Send all information to:

**IRS – Criminal Investigation
Attn: Special Agent Jennifer Fong
1301 Clay Street; Suite 1780-S
Oakland, CA 94612**



Summons

In the matter of CRYSTAL ANN POOLE - 745 61st STREET, OAKLAND CA 94609

Internal Revenue Service (Division): Criminal Investigation

Industry/Area (name or number): Oakland Field Office

Periods: January 1, 2005 - December 31, 2009

The Commissioner of Internal Revenue

To: Custodian of Records - European Auto Center

At: 10269 San Pablo Avenue, El Cerrito, California 94530

You are hereby summoned and required to appear before Special Agent Jennifer Fong or her designee an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

"SEE ATTACHMENT"

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1301 Clay Street Suite 1780-S, Oakland, CA 94612 Telephone: (510) 637-1088

Place and time for appearance at 1301 Clay Street Suite 1780S, Oakland, CA 94612

(documents can be mailed in lieu of appearance)



on the 10th day of June, 2010 at 10 o'clock a m.

Issued under authority of the Internal Revenue Code this 27th day of May, 2010

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 12-2001)
Catalog Number 21405J

Signature of Issuing officer

Signature of approving officer (if applicable)

Special Agent

Title

N/A

Title

Part C — to be given to noticee

Exhibit **B**

European Auto Center
Custodian of Records
10269 San Pablo Avenue
El Cerrito, CA 94530

ATTACHMENT

Please provide any and all records relating to the purchase, sale or lease of the following vehicles to Crystal Ann Poole (SSN: 426-29-1330):

- 2002 Lexus SC430, VIN # JTHFN48Y620033079, CA License # 6AFC193
- Other vehicles purchased, sold or leased to the person named above

The records should include but are not limited to the following:

- 1) Sales contract for the above vehicle(s), including any documentation for any trade-ins.
- 2) Lease agreements for the above vehicle.
- 3) Copies of receipts of payments and down payments. Copies of any checks (front and back), cashier's checks, money orders, wires, and documentation of any cash payment. Any paperwork showing the source of funds used for the down payment.
- 4) Credit applications to obtain financing and all supporting documentation submitted including bank statements, W-2's, Federal income tax returns, financial statements, etc. Copies of any TRW or Experian credit histories.
- 5) Any additional amounts paid for options, services, or maintenance on the above named vehicles. Include copies of the vehicle maintenance reports.

NOTE:

Contact Special Agent Jennifer Fong at (510) 637-1088 if you have any questions.

Send all information to:

**Internal Revenue Service - CI
Attn: Special Agent Jennifer Fong
1301 Clay Street; Suite 1780-S
Oakland, CA 94612**